IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

FAO.No. 130 of 2007()

(AGAINST THE ORDER DATED 28/03/2007 IN I.A.NO.965/2007 IN O.S.NO.19/2007 OF THE 1ST ADDITIONAL DISTRICT COURT, ERNAKULAM)

APPELLANT/1ST RESPONDENT/1ST DEFENDANT:

M/S.AMALCO HERBAL PRODUCTS,
AYURVEDIC PLANTATIONS, MADIYOOR, PALLARIMANGALAM,
ERNAKULAM DISTRICT, PIN-686 671, REPRESENTED BY
ITS PROPRIETRIX, M.K.AYSHA.

BY ADV. SRI.BABU KARUKAPADATH
SRI.M.A.VAHEEDA BABU

RESPONDENTS: PLAINTIFF AND 2ND DEFENDANT.
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1. **M/S. THREE-N PRODUCTS PVT. LTD,**
   REGISTERED OFFICE AT 2/12, WEST PATEL NAGAR,
   NEW DELHI-110 008, REPRESENTED BY ITS DIRECTOR
   MANMINDER SING, AGED 47, S/O. HARBANS SINGH,
   M/S. THREE N-PRODUCTS PVT. LTD, 2/12, WEST PATEL
   NAGAR, NEW DELHI - 110 008.

2. **M/S. AYURGREEN SHOP,**
   MATTANCHERRY BAZAR (NEAR BOAT JETTY), KOCHI - 2.

BY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, JUDGE.

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F.A.O. No. 130 OF 2007

Dated this the 28th day of May, 2007

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JUDGMENT

The first defendant in I.A.No.965/2007 in O.S.19 of 2007 on the file of District Court, Ernakulam is the appellant. The appellant is challenging an order passed by the court below granting ex-parte temporary injunction. The specific case put forward by the appellant is that he is a holder of a registered trade mark and there is no similarity between the name used by the respondent and the appellant. Learned counsel for the appellant submitted that the very same plaintiff filed another suit against M/s. Ayur Beauty raising similar contentions and in that suit also the respondent filed a petition for temporary injunction. It is submitted that, that injunction was subsequently vacated by the court below and the petition for injunction dismissed. The District Court after considering all aspects found that the word 'Ayur' is a generic word with definite meaning and not an invented word. It is also argued that the appellant is marketing an ayurvedic product by name Ayurgreen and there is no chance for confusion in the mind of an ordinary man. It is argued that, that product name is not deceptively similar to any trade name used by the respondent. It is argued that the appellant is restrained by an order of injunction which creates irreparable injuries. It is submitted that though the order of injunction was passed on 28.3.2007, it was communicated to the appellant only during vacation and as such he was prevented from appearing before the trial court and getting the order vacated. The appellant has produced a number of

documents before this court to establish that he is the holder of a registered trade mark and the respondent has no prima facie case. The court below has not considered the objections raised by the appellant. Since the relevancy of the documents produced were also not considered by the court below, the proper course open to me is to direct the trial court to consider the objections raised by the appellant and pass an order on merits. If notice is issued by this court in this appeal it will cause further delay in disposing of the injunction application. So without prejudice to the right of the appellant to challenge the final order, I am of the view that proper course open to me is to dispose of this appeal with a direction to the trial court to hear and dispose of the injunction application as expeditiously as possible at any rate within two weeks from the date of receipt of a copy of this judgment. In case the appellant files an application for return of the documents produced in this appeal the same shall be returned forthwith to the appellant.

In the result the F.A.O. is disposed of with a direction to the court below to hear and dispose of I.A.965/07 in O.S.19/2007 as expeditiously as possible at any rate within two weeks from the date of receipt of copy of this judgment if necessary by suo motu advancing the hearing of the suit and application with due notice to both sides.

K.PADMANABHAN NAIR
JUDGE.

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